FINAL SYNOPSIS

Title of the Research Topic:

LAWS RELATING TO CIVIL SERVANTS IN KENYA AND INDIA: A CRITICAL STUDY

A. INTRODUCTION:

The civil servants, who constitute a separate species of the labour force both in Kenya and India, are indispensible to the governance of the State in the modern administrative age. The ministers frame policies and legislatures enact laws, but the task of efficiently and effectively implementing these policies and laws falls on the civil servants.

The term 'civil servant' generally implies a body of Government employees entrusted with the administration of the country and mandated to carry out the policy of the Government of the day[1]. The term includes the (sovereign) State's employees whether regional, or sub-State/County, or even municipal employees, though it varies from country to country[2]. Moreover, even all members who hold civil posts under the National/Central or County/State Governments are roped under the term 'civil servants'. However, the term explicitly excludes all members of the defence services, although civilian officials work at Defence Ministry Headquarters[3].

For strengthening the hands of the civil servants, there is need for all pervading effective laws so as to facilitate them to function without fear or favour. Kenya having recently adopted the new Constitution and enacted various laws governing civil servants can learn a lot from the Indian laws as

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[1] "Civil Service", *http://www.businessdictionary.com/definition/civil-service.html*, [accessed on 5th August 2010].

[2] In the United Kingdom, for instance, only Crown employees are referred to as civil servants, county or city employees are not, *see*, "Civil Service", *http://en.wikipedia.org/wiki/Civil_service*, [accessed on 17th December 2010].

[3] *Inder Sain v. Union of India*, AIR 1969 Del 220. Defence personnel have their own service rules and regulations for maintaining discipline among their ranks.

India has traversed along way as a successful democracy having comparatively well-knit laws in this regard. However, laws like the society to whom they are meant for are inevitably in a flux, so is the case with Indian civil service laws.

B. STATEMENT OF THE RESEARCH PROBLEM:

Civil servants are not only the blood and breathe of any successful democracy but they are also the engines for economic development of both Kenya and India. Both the Constitutions of Kenya and India, the *Code of Regulations*, 2006 [*hereinafter referred to as COR*] and the Civil Services Rules in India have not clearly and convincingly defined the term 'civil servant'. Though the Supreme Court of India [*hereinafter referred to as SCI*] has attempted to interpret the term 'civil servant' in *Audh Narain Singh*[4] by relying upon host of factors, several questions are yet to be addressed. For instance, what are the factors to be taken into account to establish whether a person is a civil servant; can all employees who come within the meaning of Art.12 of the *Constitution of India*, 1950 [*hereinafter referred to as COI*] be termed as civil servants and is it mandatory, in all circumstances, to establish a concrete relationship between the master and the servant to determine whether a person falls in the category of civil servants, are some of the issues that haunt the researcher.

On the one hand, the *Constitution of Kenya*, 2010 [*hereinafter referred to as COK*] as well as the COI seek to instil in the civil servant a sense of security and fair play so as to facilitate him to function without fear or favour[5] and on the other, the overriding power of the Government to dismiss or to demote a

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[4] *State of Uttar Pradesh v. Audh Narain Singh*, AIR 1965 SC 360: (1964) 7 SCR 89. *See also, State of Assam v. Kanak Chandra Dutta*, AIR 1967 SC 884: (1967) 1 SCR 679; *Superintendent of Post offices v. P. K. Rajamma*, AIR 1997 SC 1677: (1977) 3 SCC 94; *Mathuradas v. S. D. Munshaw*, AIR 1981 SC 53; *State of Gujarat v. Ramanlal Keshav Lal*, AIR 1984 SC 161.

[5] *See*, Chapter Thirteen, *infra* note 7. *See also*, Art.311, *The Constitution of India*, 1950.

civil servant wherever needed has been kept intact[6]. It can be noted that at present, there is neither law nor rule clarifying the contents of the concept of 'reasonable opportunity' as envisaged in Art.311 of the COI. It is for the Courts to ascertain whether or not the law or the rules available provide for a reasonable opportunity to a civil servant. Consequently, diverse judgements creating confusion are being passed by the Courts. Therefore, in the considered opinion of the researcher it is high time to re-examine Art.311 of the COI as at present, it is being misused to give immunity cover to dishonest civil servants or Government servants of doubtful integrity.

Chapter Thirteen of the COK provides provisions for governing service conditions of civil servants that includes due process Clause[7]. It is in this backdrop that civil servants accused of any crime cannot be easily suspended pending inquiry of the offence committed. This ironically, results in the possibility of tampering of evidence essential for conviction of a civil servant leading to low rate of conviction or dismissal of dishonest civil servants. This lacunae need to be addressed through this research.

Every civil servant is enjoined to promote the welfare of the people by securing and protecting a social order in which social, economic and political justice shall form all institutions[8]. Civil servants need to work to minimize the inequalities of income, status, facilities and opportunities and to secure a legal system that promotes justice on the basis of equal opportunity[9].

The concept of civil service has evolved over time, so have notions of its role and responsibilities. Independent Kenya and India inherited from the

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[6] *Ibid*. *See also*, S. N. Mishra, Anil Mishra and Sweta Mishra, *Public Governance and Decentralization* 126, 1st edn., (New Delhi: Naurang Rai Mittal Publications, 2003), *available at*: http://books.google.co.in/books?id=kpohGPGIyYMC&pg=PA125&lpg=PA125&dq=problems+of+article+311+of+indian+constitution&source=bl&ots=3V_rCsnB0q&sig=pO4PofG0wpS4bbYml_vkUe0Ztqo&hl=en&sa=X&ei=uLnLUd2CF86Trge9nYGoCA&ved=0CEQQ6AEwBTgK#v=onepage&q=problems%20of%20article%20311%20of%20indian%20constitution&f=false.

[7] Art.236, the *Constitution of Kenya*, 2010.

[8] *See*, for *e.g.*, Art. 232, *ibid*.

[9] *Ibid*.

British a comprehensive civil service structure and established practices. In India, its utility for ensuring national unity and good administration was recognized and accepted by the Constituent Assembly and incorporated several provisions in the COI[10].

C. SIGNIFICANCE OF THE RESEARCH PROBLEM:

A nation's image, position and standing in the international affairs in the 21st Century largely depend upon the dedication, capability, efficiency and effectiveness of its civil service. Several issues crop up at this juncture, for instance, whether the civil servants, at present in Kenya and India possess the necessary competence, skills, and capability to perform multiple roles such as, constructive thinker, speedy decision maker and crisis manager in view of the emerging problems in a successful way leading to the growth of the economy of respective States? Whether various legal instruments in place in Kenya and India guarantee job security and better conditions of service for persons employed by the Government?

Politics and public service go hand in hand in all countries[11]. The only difference is the degree of influence one has over the other. In democracies where leadership transitions take place, it is often within Parliament and the Cabinet. But more often than not, political transition also takes place throughout the entire administration where key roles in Government Ministries and Departments also change hands and card-carrying members or supporters of the

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[10] *See, e.g.,* Part XIV, the *Constitution of India*, 1950; "Indian Civil Service: Historical Background", *http://upsc.gov.in/general/historic.htm,* [accessed on 19th July 2009].

[11] The relationship between the politicians and the civil servants in Kenya and India over the years has been characterized by mutual suspicion and occasionally by conflict as well, arising from conflicting role interpretation. For *e.g.,* the political administrative culture of centralism which has been fostered since independence in Kenya according to which power is concentrated in the Executive branch of the Government has been largely responsible for the problems under review in the civil service. Unless the attitude is changed and proper measures are put in place, the poor relationship between the two groups is bound to continue. *See,* "Politicians and the Civil servants in Kenya", *http://www.dpmf.org/images/politicians-walter.html,* [accessed on 15th July 2009].

ruling political party are moved into influential posts[12]. Cronyism is rampant and nepotism not uncommon especially in the process of recruitment and promotion of civil servants. Developing States, in particular Kenya and India are not immune to this.

The present "all change" policy of the civil service of politically moving officials from their current duties to other posts as a favour or disfavour is detrimental to the effective functioning of public services. During recruitment and promotion, attracting the best and the brightest to join the civil service should be the only criteria to give impetus to the growth and dynamism of the public sector. However, politics and corruption have proved to be a major impediments in the efficiency of civil servants in the public sector both in Kenya and India in the contemporary era.

Another murky spot in the civil service is that, some people employed in the civil service at present in Kenya and India are not competent to hold civil service posts[13]. This has lead to increased inefficiency and poor service delivery in most of the Government offices.

It is also a common feature now-a-days for persons to hold the post in acting capacity for a long span of time in the civil service[14]. The competent authorities empowered to make regular recruitments are adopting delaying tactics, probably, because of political pressure and wrangles within the Ministry concerned. It is therefore inevitable to reconsider the legal provisions to address this issue.

In the light of the above, the present research, being one of its kind and one that has never been carried out, aims at finding out the loopholes in the

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[12] It is therefore incumbent that there should be an effective and stringent law in place to ensure that civil service officials should be basically meritorious and non-partisan especially in the execution of their duties to ensure services are provided to the public in an efficient and effective way.

[13] Most of the unqualified persons in the civil service were either recruited through corrupt means/cronyism or political influence.

[14] It is an experience that persons appointed on acting capacity are not ready to take concrete decisions for fear of either losing their jobs or being held responsible incase of anything done wrong.

existing laws, rules and regulations to counter the menace of increasing politicisation, corruption, lack of transparency and accountability in: a) the recruitment and promotion of civil servants both in Kenya and India, b) streamlining the procedure/manner in which recruitment and promotion is carried out in the civil service so as to increase the efficiency in service delivery, c) determining conditions of service of civil servants and d) ascertaining dispute settlement mechanisms of service matters. The justification provided in the succeeding paragraphs of this synopsis would re-emphasize upon the assertion of the researcher in this context.

D. JUSTIFICATION OR REASONS FOR SELECTION OF PRESENT TOPIC FOR RESEARCH:

The performance of civil servants both in Kenya and India has been a major public concern. Civil service has been characterised by low work performance and poor service delivery. The major problem indicators include absenteeism from work, lateness, corruption, theft, high rate of complaints and low quality work output. There is an urgent need therefore to undertake research aimed at finding out whether various legal instruments in existence in Kenya and India are the core reasons behind such problems or whether there is laxity on the part of the law enforcement authorities.

The main objective of this research is therefore to explore, describe, explain, compare and critically evaluate the existing legal framework based on which inferences and conclusions can be drawn that would facilitate to offer suggestions for further improvement and research in the law relating to recruitment and promotion of civil servants both in Kenya and India.

The ancillary objectives of this research are to compare and determine the differences existing in the laws relating to civil servants' conditions of services and the dispute settlement mechanisms along with the constitutional rights and liabilities of the civil servants both in Kenya and India.

It is also laudable to identify the weakness of the existing laws and highlight issues that are not covered or partially covered and examine whether and to what extent a new law or modifications in the existing laws would remedy the situation. Further, it is creditable to study the effects and the reasons for the inclusion of Chapter 13 and Art.311 into the Kenyan and Indian Constitutions respectively for the protection of the civil servants against any arbitrary dismissal, removal or reduction in their ranks.

E. REVIEW OF LITERATURE:

In any research including legal research, researcher through review of literature interprets and critically evaluates the existing literature in order to accumulate over all knowledge of the subject.[15] This ultimately clears the picture for the researcher to formulate researchable questions or hypotheses.[16]

Literature review is the very basis of research; it is the platform on which the researcher builds an argument, places his research in context within his discipline and demonstrates how his research improves his field.[17] It generally resolves controversies, hints at the need for additional research, and/or defines a topic of inquiry.[18] Through literature review one can make out how familiar the researcher is with the previous relevant data generated by experts through their research in the same subject. More importantly, through literature review, the researcher not only avoids repetition in the work which may have been already undertaken but also helps in avoiding mistakes committed by previous researchers.[19]

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[15] "Writing a Literature Review", *http://www.csu.edu.au/__data/assets/pdf_file/0005/82796/LitReview.pdf*, [accessed on 25th June 2013]; Clare & Hamilton, *Writing Research* 8, (2003).

[16] A literature review provides an overview of the scholarly writings published on a topic by accredited scholars and researchers.

[17] "Literature Review", *http://www.library.arizona.edu/help/tutorials/litreviews/index.html*, [accessed from 25th June 2013].

[18] "Writing a Literature Review", *supra* note 15; Aveyard, Helen, *Doing a Literature Review in Health and Social Care: A Practical Guide*, 2nd edn., (Berkshire, Great Britain: Open University Press, 2010).

[19] Cottrell, R. R., & McKenzie, J. F., *Health Promotion and Education Research Methods: Using the Five Chapter Thesis/Dissertation Model*, 2nd ed., (Boston, MA: Jones & Bartlett Publishers, Inc., 2011).

Further, literature review establishes creditability/importance of the research undertaken[20] besides justifying the choice of research problem.[21] It also helps in:

- establishing a link in a chain of research study that is developing knowledge in a certain field;
- demonstrating to the readers that the researcher is familiar with significant and/or up-to-date research relevant to research topic chosen;
- supporting the argument/proposition of research topic chosen using evidence drawn from authorities or experts in the research field;
- identifying a gap within the literature that researcher will attempt to address[22], *etc*.

In view of the above, the researcher in the present doctoral research has undertaken an extensive review of relevant literature generated on service laws both in Kenya and India which ultimately has helped in preparing the entire thesis.

The research topic selected has wider dimension influencing and affecting several aspects of good governance in both Kenya and India. Hence, the literature studied and relied upon is all inclusive. The primary data comprises of Constitutional provisions, Legislative enactments and Rules, Ordinances, Judicial decisions, International Treaties and Conventions, Bill of Rights and many other International Declarations, documents, and Reports which are listed in the bibliography/webliography.

The Constitution being the supreme law of the land both in Kenya and India together with relevant provisions under the International Conventions and Recommendations on service laws were subjected to review. A critical study of

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[20] Houser Janet, *Nursing Research: Reading, Using, and Creating Evidence*, (USA: Jones & Bartlett Learning, 2007).

[21] "Writing a Literature Review", *http://www.monash.edu.au/lls/llonline/writing/general/lit-reviews/index.xml*, [accessed from 25th June 2013].

[22] "What is a Literature Review", *http://www2.le.ac.uk/departments/gradschool/training/resources/literature-review*, [accessed from 25th June 2013].

various domestic laws and rules like for *e.g.*, the *Workmen's Compensation Act*, 1923; the *Employees' State Insurance Act*, 1948; the *All India Services Act*, 1951; the *Employees' Provident Funds and Miscellaneous Provisions Act*, 1952; the *Maternity Benefit Act*, 1961; the *Payment of Gratuity Act*, 1972; the *National Hospital Insurance Fund Act*, 1998; the *National Social Security Fund Act*, Cap 258; *National Rural Employment Guarantee Act*, 2005; the *Employment Act*, 2007; the *Judicial Services Act*, 2011; the *Vetting of Judges and Magistrates Act*, 2011; the *Supreme Court Act*, 2011; the COR, the Indian Civil Service Rules, *etc.*, has been painstakingly undertaken in the doctoral thesis. The judicial interpretation on various issues surrounding service laws both in Kenya and India as per the requirement is also reviewed.

The secondary data subjected to review, on the other hand, comprises of Reports published by Independent Agencies including Reports available in the University Library and Government Libraries spread across Kenya and India, Papers presented in different Conferences and Seminars, Articles published in Law Journals[23], Newspapers, e-sources and Commentaries written by various distinguished authors.

[23] For *e.g.*, Ben Sihanya, 'The Role of the Judiciary in the Accountability and Governance of the Devolved Government Structure,' paper presented to the Institute of Certified Public Accountants of Kenya (ICPAK) 20th Economic Symposium at the Hilton Hotel, Nairobi, 24th February 2012; Prempeh H. Kwasi, 'Marbury in Africa: Judicial Review and the Challenge of Constitutionalism in Contemporary Africa', *Tulane Law Review*, Vol.80, 2006; Alexander Horne, 'Judicial Review: A short Guide to Claims in the Administrative Court,' Research paper presented to the House of Commons, London, 28th September 2006; Balakrishnan K. G., 'Judicial Activism Under the Indian Constitution,' Address by Hon'ble Ex-Chief Justice of India at Trinity College Dublin, Ireland, 14th October 2009; Rao Gurram Ramachandra, 'India: Judicial Review in India,' 10th April 2003.

In the *First* Chapter of the doctoral thesis, the researcher has relied on views and comments of eminent luminaries like for *e.g.*, Pal Samaraditya[24], M. P. Jain,[25] H. M. Seervai,[26] Upendra Baxi,[27] J. D. De,[28] Jain and Jain,[29] P.M. Bakshi,[30] D. D. Basu,[31] V. N. Shukla,[32] S. R. Maheshwari,[33] Anson, Ahmed Naseem, Abraham Kiapi,[34] Tom Ojienda,[35] Hellen Apiyo,[36] Kashyap Subhash,[37] Nwabueze,[38] P. L. O. Lumumba[39] while analysing the historical perspectives of civil service in Kenya and India including the fundamental rights of civil servants.

Civil service plays a vital role in the socio-economic development of the nation as well as in the maintenance and improvement of public services. Both in Kenya and India, efforts are continuously being made towards reforming the civil service, especially in the area relating to recruitment and promotion of civil servants, with the key objective of making it more professional, responsive to national development challenges and efficient in delivery of services. In this context, the researcher has found support in the opinions of Hon'ble Dalmas

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[24] Pal Samaraditya, *Service Law Relating to Government and Public Undertakings*, 2nd edn., (New Delhi: Wadhwa and Company Nagpur, 2004).
[25] Jain M. P, *Indian Constitutional Law*, 6th edn., (Gurgaon: LexisNexis Butterworths Wadhwa Nagpur, 2010); Jain M. P., *The Legal Status of Public Corporations and their Employees*, 18 JILI 1-34 (1976).
[26] Seervai H. M., *Constitutional Law of India*, Vol 3, 4th edn., (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2005).
[27] Baxi Upendra, *Law and Poverty Critical Essays*, (Bombay, 1988).
[28] De J. D., *The Constitution of India*, Vol 2 3rd edn., (Hyderabad: S. P. Gogoi (H.U.F), 2008).
[29] Jain and Jain, *Principles of Administrative Law*, (1986).
[30] Bakshi P.M, *The Constitution of India*, 8th edn., (New Delhi: Universal Law Publishing Co. Pvt Ltd, 2007).
[31] Basu Das Durga, *Introduction to the Indian Constitution*, 19th edn., (NewDelhi: Wadhwa and Company, 2004).
[32] Shukla V. N., *Constitution of India*, 11th edn., (Lucknow: Eastern Book Company Publishing (P) Ltd., 2008).
[33] Maheshwari S.R., *Indian Administration*, 6th edn., (Orient Longman Private Limited, New Delhi, 2005).
[34] Kiapi Abraham, *Civil Service Laws in east Africa*, 2nd edn., (Nairobi: Kenya Literature Bureau, 1984).
[35] Ojienda Tom, Anti-Corruption and Good Governance in East Africa, (Law Africa Publishing Ltd, 2007).
[36] Apiyo Hellen, *Civil Service Reform Policy in Kenya: A Review of the Retrenchment Strategy*, (Institute of Policy Analysis, 2006).
[37] Kashyap C. Subhash Dr., *Constitutional Law of India*, Vol 1 1st edn., (New Delhi: Universal Law Publishing Co. Pvt. Ltd., 2008).
[38] Nwabueze, B.O., *Judicialism in Commonwealth Africa*, (1977).
[39] P. L. O. Lumumba, M. K. Mbondenyi, S. O. Odero, *The Constitution of Kenya*, (Nairobi: Law Africa Publishing (K) Ltd., 2011).

Otieno, Mr. Kidwaj, Pal Samaraditya,[40] Amreshwar Avasthi and Shriram Maheshwari,[41] Sapru R. K.,[42] Goel S. L. and Goel B. B., Pigors Paul and Myers Charles,[43] Rumki Basu, Where K.C.,[44] Laxmikanth M., Pliffener M. John and Presthuer R.,[45] Vance, *etc.*, appreciating the importance of recruiting and promoting competent persons to the civil service.

While dealing with several matters relating to the conditions of service of civil servants in the *Third* Chapter, the views expressed in commentaries and various articles on service laws like for *e.g.*, Mandal K. M.,[46] Raichura K. Sundeep, Ngirachu John along with judicial pronouncement on same matter were of great import. No doubt, there is some difference in the line of argument developed by the researcher in his endeavor on these issues from the earlier experts. But the literature subjected to review has helped in proposing concrete suggestions in this regard.

Further, various commentaries and articles by prominent authors like for *e.g.*, P. L. O. Lumumba, Tom Ojienda, Kiapi Abraham, Jain M. P., Doabia T. S.,[47] Roy Dey S. K.,[48] Bag R. K.,[49] Datar P. Arvind,[50] Rangarajan R.,[51] were referred to in the *Fourth* and the *Fifth* Chapters of the doctoral thesis that deal with special categories of civil servants and settlement of disputes over service matters respectively.

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[40] Pal Samaraditya, *Service Law Relating to Government and Public Undertakings*, 2nd edn., (New Delhi: Wadhwa and Company Nagpur, 2004).
[41] Amreshwar Avasthi and Shriram Maheshwari, *Public Administration*, 10th edn., (Agra: Lakshmi Narain Agarwal, 1980).
[42] Sapru R. K., *Civil Service Administration in India* (1st edn.,) New Delhi: Deep and Deep Publications, 1980.
[43] Pigors Paul and Myers Charles, *Personnel Administration: A Point of View and a Method*, 8th ed., (Tokyo: McGraw-Hill, 1977).
[44] Where K. C., *The Civil Service in the Constitution*, (London: The Atholone Press, 1954).
[45] Pliffener M. John and Presthuer R. Vance, *Public Administration*, (New York: Ronald Press Company, 1953).
[46] Mandal K. M., *Laws on Public Service*, 1st edn., (New Delhi: East Law House Private Limited, 2003).
[47] Doabia T. S. (Justice), *The Law of Services and Dismissals*, Vol. 2, 4th edn., (Gurgaon: Lexis Nexis Butterworths Wadhwa Nagpur, 2011).
[48] Roy Dey S. K., *Service Laws*, (Bhubaneswar: Maruti Printech Industry, 2011).
[49] Bag R. K., *Service Law of Government Employees* 1st edn., (New Delhi: Eastern Law House Private Ltd., 2009).
[50] Datar P. Arvind, *Commentary on the Constitution of India*, Vol 2, 2nd edn., (New Delhi: Wadhwa and company Law Publishers, 2007).
[51] Rangarajan R., *Service Law: A Case Law Overview*, 2nd edn., (Hyderabad: S. P. Gogia (H.U.F.,) 2008).

F. HYPOTHESIS:

Hypothesis is generally an essential tool in any research undertaking. It is not only the presumptive statement of a proposition which the investigation seeks to prove or disprove[52] but also a proposition, or set of propositions, set forth as an explanation for the occurrence of some specified group of phenomena, either asserted merely as a provisional conjecture to guide investigation or accepted as highly probable in the light of established facts[53].

According to Leedy and Ormrod, hypothesis is a "logical supposition, a reasonable guess, an educated conjecture [which] provides a tentative explanation for a phenomenon under investigation."[54] Regardless of the type of hypothesis, the goal of any hypothesis is to help explain the focus and direction of the research and this can only be done by testing the propositions. Moreover, a good hypothesis helps an investigator to locate information needed to solve the research problem(s).[55] A single study may have one or more hypotheses depending on the study to be undertaken.

A wide variety of statutory provisions, administrative regulations and codes of practises are in place to ensure the smooth functioning of the civil servants in Kenya and India. However, the existing legal measures are inadequate to deal with the problems faced by the civil servants in executing their work even though elaborate enforcement, monitoring and administrative mechanisms designed to set and maintain high levels of standards among the civil servants are in place.

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[52] "Hypothesis", *http://people.du.ac.in/~pkdas/RM/rm-3.pdf*, [accessed on 26th June 2013].
[53] "Dictionary.com", *http://dictionary.reference.com/browse/hypothesis*, [accessed on 26th June 2013].
[54] Leedy Paul D and Ormrod, Jeanne E., *Practical Research: Planning and Design*, 7th edn., (Upper Saddle River, NJ: Merrill Prentice Hall, 2001).
[55] *Ibid*.

Political influence and corruption among the civil servants is increasing at an alarming rate[56]. The existing laws in Kenya as well as in India do not seem to be sufficiently deterrent against such vices. Although deterrence alone is not an answer to curbing corruption, it may at least minimise the problems relating to such incidences.

The researcher is hopeful that the proposed research will yield a significant result in terms of both positive and negative impact of the laws relating to civil servants both in Kenya and India. Thus, this study will attempt to answer the following questions:

- Whether the procedure adopted for recruitment and promotion of civil servants both in Kenya and India need to be reconsidered?
- Should there be reservations even in promotions for vulnerable groups including women?
- Are the existing laws sufficiently deterrent to minimise corruption and political influence especially during recruitment and promotion of civil servants?
- Is there any need for reconsideration of laws governing conditions of service of civil servants both in Kenya and India?
- Whether the disputes settlement mechanisms relating to civil servants provided under the relevant laws both in Kenya and India are adequate, efficient and effective?

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[56] *See*, "Graft in Civil Service Traced Back to 1972", *http://www.newsfromafrica.org/newsfromafrica/articles/art_5534.html*, [accessed on 18th June 2009]. *See also*, "Republic of Kenya: Public Administration Country Profile", *http://unpan1.un.org/intradoc/groups/public/documents/un/unpan023269.pdf*, [accessed on 18th June 2009]; "Corruption In India", *http://en.wikipedia.org/wiki/Corruption_in_India*, [accessed on 18th June 2009]; "Corruption in India: An Emperical Study", *http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019888.pdf*, [accessed on 19th June 2009];
"Tackling Corruption: An Indian Perspective", http://www.unafei.or.jp/english/pdf/RS_No66/No66_11VE_Mehta2.pdf, [accessed on 20th June 2009].

G. SCOPE OF THE PRESENT RESEARCH:

Research in any discipline including law, by and large, should not be of a general nature but should be confined to a particular time-period, geographical area, place, people, institution, *etc*. In this context, it is essential to draw the delimiting lines and to identify the scope of the research before the hypothesis is put to test. The process of delimitation in research as Keith Punch suggests involves "drawing of boundaries around a study and showing clearly what is and what is not included"[57]. This is to enable the interested, to know the essential purpose of the research and the limits of the study as determined by the researcher. Any research, to be meaningful, must have specific objectives and a paradigm[58].

In the present research, as the researcher being a Kenyan national studying in India is formidably well acquainted with the problems faced by civil servants in both countries, the researcher will focus upon the critical evaluation of the laws governing civil servants both in Kenya and India, more especially, the provisions relating to recruitment, promotion, conditions of service, settlement of disputes over service matters, *etc*.

The Constitution, whether written or unwritten, is the foundation of all laws relating to civil servants. Moreover, it is the Constitutional provisions that empower the law makers to make laws that govern civil servants. Therefore, all relevant provisions of the Constitutions of Kenya and India pertaining to civil service will be properly perused. Special emphasis will be placed upon Chapter Thirteen of the *Constitution of Kenya* and Part X1V and X1V-A of the Indian Constitution which exclusively deals with civil service under the National/Union and Counties/States, Public Service Commissions and Tribunals.

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[57] Keith F Punch, *Introduction to Social Research*: *Quantitative and Qualitative Approaches* 272, (London: Sage Publication, 1998).

[58] Anwarul Yaqin, *Legal Research and Writing Methods* 39, (Nagpur: Lexis Nexis Butterworths Wadhwa, 2008).

Various domestic laws, rules and regulations like for *e.g.*, the *Workmen's Compensation Act*, 1923; the *Employees' State Insurance Act*, 1948; the *All India Services Act*, 1951; the *Employees' Provident Funds and Miscellaneous Provisions Act*, 1952; the *Maternity Benefit Act*, 1961; the *Payment of Gratuity Act*, 1972; the *National Hospital Insurance Fund Act*, 1998; the *National Social Security Fund Act*, Cap 258; *National Rural Employment Guarantee Act*, 2005; the *Employment Act*, 2007; the *Judicial Services Act*, 2011; the *Vetting of Judges and Magistrates Act*, 2011; the *Supreme Court Act*, 2011; the COR, the Indian Civil Service Rules, *etc.*, are selectively referred and brought within the scope of this research at the relevant Chapters in the thesis. In addition, the judicial interpretation on various issues surrounding service laws both in Kenya and India is also roped within the scope of this research.

H. METHODOLOGY ADOPTED FOR COLLECTION OF DATA FOR THE PRESENT RESEARCH:

The researcher in the present research has adopted doctrinal or non-empirical method for collecting required data. This research will base its findings, *inter alia*, on analytical and critical studies. To come up with pertinent findings and to provide credible recommendations, this study will utilize two sources of data *i.e.*, primary and secondary.

Primary sources, such as, International Conventions and Recommendations, Constitutions of both Kenya and India, Statutes, Rules, Regulations, Commission Reports, Case Laws, *etc.*, available in the library and on the Internet will be perused for collection of data.

In addition to these, *secondary sources* like for *e.g.,* Commentaries written by various authors, reports published by Independent Agencies, Papers presented in different Conferences and Seminars, Articles published in Law Journals, Newspapers and various e-sources will also be relied upon.

I. SCHEME OF THE DOCTORAL THESIS:

The issue of civil service reforms in recruitment, governance and administration has become the focus of attention in recognition of the fact that good governance and efficiency in service delivery is necessary for ensuring success of Government schemes, bringing improvements in the quality of life of citizens, eradicating poverty and for realization of the goals of equity and equality enshrined in the Kenyan as well as the Indian Constitutions.

With rapid and fundamental changes taking place in the political, economic and technological fields, the need for major reforms in the system of recruitment, promotion, governance and public administration has assumed greater urgency.

Far-reaching changes in the global economy, as well, has made it necessary to build a competent and well-functioning civil service and as a result of recent changes introduced by globalization, countries are competing internationally not only in the market place but also on the quality of their governance structures. The changed policy of deregulation, liberalization and competition has suggested a new role for the civil services, emphasizing the strategic management of the economy in less prescriptive and more market-driven approaches.

The change in the economic structure has raised new demands related to control and accountability of the civil services as well as new definitions of professional obligations. In addition, the role and importance of civil society organizations and the private sector in the Kenyan and Indian economy and in society in general has increased substantially over the years, leading to the demand for a more participative Government.

It is in recognition of the above mentioned realities that the researcher chose the above stated research topic in order to prepare a blueprint for revamping the civil service both in Kenya and India and to suggest measures to

achieve a pro-active, responsive, accountable, sustainable and efficient administration for the respective countries at all levels of Government.

The "introduction" part sheds light upon the entire thesis by covering introduction of the research problem, reasons behind selection of the said researchable topic, its importance in the contemporary period along with its scope and underlying justifications for choosing this topic for research. Moreover, the literature review exhaustively undertaken is also stated in this part of the thesis. In addition, the methodology adopted for the collection of required relevant data has also been discussed in a nutshell. The last segment provides the scheme of the doctoral thesis.

In the *First chapter* entitled "Changing Scene - Memoirs of a Civil Servant in Kenya and India: The Constitutional Facet", the historical and comparative perspectives of civil service in Kenya and India shall be discussed. The meaning of the term 'Civil Servant', the Fundamental Rights enshrined in both the Constitutions of Kenya and India relating to civil service, and the Doctrine of Pleasure and its limitations shall as well be comprehensively discussed.

The *Second Chapter* will critically analyse the laws relating to recruitment and promotion of civil servants both in Kenya and India. Moreover, brief historical perspective, importance of civil service recruitment, the meaning and purpose of recruitment and promotion of civil servants will be undertaken in this Chapter. Further, the methods, qualifications/eligibility and the agencies for recruitment and promotion of civil servants in Kenya and India will also be exhaustively examined.

An appraisal of the conditions of service of civil servants in Kenya and India will be systematically dealt with in the *Third Chapter*. The provisions relating to pay [more especially the principle of 'equal pay for equal work'], dearness allowance and leave including its kinds and conditions of eligibility, shall as well be critically evaluated. Social security measures *i.e.*,

superannuation and retiral benefits, medicare, maternity benefits, employment of children of those dying in harness, *etc.*, will be adequately addressed in this chapter.

The *Fourth Chapter* deals with the special categories of civil servants in Kenya and India. In this Chapter, various relevant provisions under the Constitutions of Kenya and India, domestic laws and rules governing the recruitment and promotion of Supreme and High Court officers and servants along with their condition of services in the light of judicial pronouncements bearing upon disciplinary actions taken for misconduct of the judicial officers and servants, are critically evaluated.

The *Fifth Chapter* will essentially deal with settlement of disputes over service matters. This Chapter will incorporate the Departmental remedies [the representation, review, revision and appeal of decisions], remedies before the Administrative Tribunals [jurisdiction, scope and procedure, merits and demerits] and judicial review of service matters [jurisdiction of the Supreme and High Courts both in Kenya and India].

The *Sixth Chapter* of the doctoral thesis incorporates the Conclusions drawn from the study and also Suggestions for effectuating amendments wherever needed for making both the Constitutions of Kenya and India along with all other laws relating to civil service more effective to counter the menace of increasing politicisation, corruption, lack of transparency and accountability in the recruitment and promotion of civil servants both in Kenya and India.

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